

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**ROSS UNIVERSITY SCHOOL OF  
MEDICINE AND GLOBAL EDUCATION,**

**Plaintiff,**

**vs.**

**BEHZAD AMINI,**

**Defendant**

**Case No.: 3:13 -CV-06121**

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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
DEPENDENT'S MOTION FOR DISMISSAL PURSUANT TO FEDERAL  
RULES OF CIVIL PROCEDURE 12(B)(2), 12(B)(3), AND 12(B)(6), OR,  
ALTERNATIVELY, TO TRANSFER VENUE PURSUANT TO FEDERAL  
RULES OF CIVIL PROCEDURE 1404**

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Date: NOVEMBER 19, 2013



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**PRELIMINARY STATEMENT**

1  
2 1. As noted by this Court during the October 28, 2013 hearing, Mr. Amini  
3 will not be able to adequately represent himself without an attorney and at a distance of 2,394  
4 miles away from New Jersey.  
5

6 2. Mr. Amini resides in Phoenix, Arizona. He has no connection to the state of New  
7 Jersey. He does not own property, bank accounts, maintain an office or an agent, or direct any  
8 business specifically to New Jersey. Mr. Amini has never resided in New Jersey. **Decl. ¶ 1.**

9 3. Mr. Amini is unemployed and has less than \$700 left in his bank account and is  
10 unable to maintain a basic living. He Owes US taxpayers \$239,375 as result of his medical  
11 education at Ross University, but is unable to service his loan due to financial hardship. He can-  
12 not afford an attorney. He has no health insurance and has not been able to visit his seven-year-  
13 old old daughter in Canada due to financial difficulties. **Decl. ¶ 2, ¶ 3, ¶ 4, ¶ 5, ¶ 6, ¶ 7.**

14 4. The current forum is not accessible to the defendant by car or train, and given that  
15 he lacks financial means, he can neither afford a plane ticket, hotel expenses, nor hire an attorney.  
16  
17

18 5. In his response to Mr. Amini's motion, Attorney Flynn has stated that Mr. Amini is  
19 financially capable to move to New Jersey and defend himself against this lawsuit because he  
20 can afford a cellular phone. Having a cell phone or paying \$68 to register six domains is not an  
21 indication that Mr. Amin is capable of paying thousands of dollars that he doesn't have to defend  
22 this case in a New Jersey court.  
23

24 6. Therefore, an extraordinary circumstance does exist, and the defendant respectfully  
25 asks this court to transfer the venue to the District Court of Arizona so he can advocate his  
26 position without the inherent disadvantage of arguing a case from 2,394 miles away.

7. The plaintiff's main business is located outside of the state of New Jersey. According to Ross University's own published catalog from 2013 (**see below Exhibit-1**), and contrary to the plaintiff's statement to this Court, RUSM's administrative functions in New Jersey are not substantial. The RUSM campus is located on the Caribbean island of Dominica, and the dean's office, who signed the verified complaint, the office of registrar, the office of student services, and the office of clinical rotations are all located in Florida. The President's office is located in Chicago. Majority of the staff for the educational and business operations is located outside of New Jersey. The New Jersey office only handles student finance. Mr. Amini had spent over a year attending RUSM in Dominica. He had spent over six months attending RUSM in Miami, but he had never visited Ross University in New Jersey.

**SECTION 1: ROSS UNIVERSITY CONTACT LIST**

**1.1 ADMINISTRATIVE OFFICES**  
 Ross University – Offices of Student Services, Registrar, and Clinical Clerkships  
 2300 SW 145<sup>th</sup> Avenue, Suite 200, Miramar, FL 33027  
 • Telephone: (954) 885-3700  
 • Fax: (732) 509-4820  
 • URL: <http://www.RossU.edu/medical-school/> ← Miami

Ross University – Office of Student Finance  
 630 US Highway 1, Suite 300, North Brunswick, NJ 08902  
 • Telephone: (732) 509-4600  
 • Fax: (732) 509-4820  
 • URL: <http://www.RossU.edu/medical-school/> ← New Jersey

**1.2 OFFICE OF THE REGISTRAR**  
 E-Mail: [Registrar@RossU.edu](mailto:Registrar@RossU.edu)  
 Fax: (732) 509-4820 ← Miami  
 Functions:  
 – USMLE Step 1 & Step 2 Applications and Score Reports  
 – Enrollment Status, LOAs, Withdrawals  
 – Deferrals, Enrollment Verification, Immigration Letters, Transcripts  
 – Graduation Audits, Diploma Processing

Name	Title	Contact Information
Sandra Herrin	University Registrar	<a href="mailto:sherrin@rossu.edu">sherrin@rossu.edu</a>
Katie Roberson	Associate Registrar	<a href="mailto:kroberson@rossu.edu">kroberson@rossu.edu</a>
Simone Maxwell	Senior Registrar Advisor	ext. 3047
Georgia Lue	Registrar Advisor	ext. 3047
Tyrone White	Registrar Advisor	ext. 3047
Sarah Schimek	Registrar Coordinator	ext. 3047

**1.3 OFFICE OF STUDENT FINANCE**  
 Email: [FinAid@RossU.edu](mailto:FinAid@RossU.edu)  
 Fax: (732) 509-4821 ← New Jersey  
 Functions:  
 – Financial aid eligibility requirements  
 – Debt management advice  
 – Advisement on residency relocation loans

1 8. Furthermore, DeVry Inc., an Illinois corporation, owns and operates three schools in  
2 Arizona, located in: Phoenix, Mesa, and Glendale.

3 9. Ross University regularly conducts informational seminars on its program in Arizona.

4 10. Since 2006, over ten lawsuits have been filed by students against Ross University,  
5 and over one hundred (>100) lawsuits have been filed against the plaintiff's parent company,  
6 DeVry, Inc., across the country.

7 11. Therefore an order transferring the venue to the United States District Court for the  
8 District of Arizona would not inconvenience or prejudice the plaintiff in any way because of  
9 their limitless resources and their ability to litigate this case in any forum.  
10

11  
12 **DISTRICT COURT OF NEW JERSEY JUDGES DENIED PERSONAL**  
13 **JURISDICTION OVER DEFENDENTS WITH NON-INTERACTIVE WEBSITES**

14 12. In *Weber v. Jolly Hotels*, 977 F. Supp. 327 – 1997, District Judge Wolin held that the  
15 District Court lacked jurisdiction because the hotel's website merely amounted to a national  
16 advertisement and was not a means of conducting business in New Jersey. The court stated:  
17 “sites that merely provide information or advertisements ("passive web sites") - here, without  
18 other factors, at least in the Third Circuit, jurisdiction is denied since to hold otherwise would  
19 have the effect of creating worldwide jurisdiction over anyone who establishes an Internet  
20 website”  
21

22 13. In *Osteotech v. Gensci Regeneration Services*, 6 F. Supp.2d 349 (D.N.J. 1997),  
23 District Judge Bissell found that the District Court did not have personal jurisdiction because the  
24 defendant's website was not sufficiently interactive to find that the defendant purposely availed  
25 itself of the benefits of the forum state.  
26

1           14. In *Green v. William Mason & Co.* 976 F. Supp. 298 - 1997, District Judge Walls  
2 refused to exercise the District Court of New Jersey's general jurisdiction over the defendant  
3 where its website merely constituted an advertisement that provided a toll free number.

4           15. In *Decker v. Circus Circus Hotel* F. Supp. 2d 743, the District Court of New Jersey  
5 refused to exercise personal jurisdiction over a Nevada casino because, although the defendant -  
6 casino operated an interactive website that invited New Jersey residents to make hotel  
7 reservations over the Internet, the website contained a forum selection clause that conditioned the  
8 use of the website upon an agreement that all disputes be settled in Nevada.

9           16. The central facts at issue take place outside of New Jersey. All of the alleged  
10 incidents in question have taken place in Phoenix, AZ rather than in New Jersey. In addition, it is  
11 undisputed that the defendant Behzad Amini resides in Phoenix, Arizona. None of the alleged  
12 incidents took place in the state of New Jersey. Mr. Amini has spent over a year attending  
13 RUSM in Dominica. He has spent over six months attending RUSM in Miami. But he has never  
14 visited Ross University in New Jersey.

15           17. The complaint should be dismissed under Rule 12(B)(2) as Mr. Amini is not subject  
16 to personal jurisdiction in this Court. Specific personal jurisdiction does not exist over Mr. Amini  
17 as he did not purposefully avail himself of the privilege of conducting activities in New Jersey,  
18 the plaintiff's claims do not arise out of activities directed at New Jersey, and, therefore, the  
19 exercise of jurisdiction would not be constitutionally reasonable. New Jersey lacks general  
20 personal jurisdiction because Mr. Amini does not have continuous and systematic contacts with  
21 New Jersey.  
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26

1 18. Furthermore, the complaint should be dismissed for improper venue under rule  
 2 12(b)(3) as Mr. Amini never lived in New Jersey before. Mr. Amini wrote the content of his  
 3 website outside of New Jersey, and published his website outside of New Jersey. No “substantial  
 4 part” of those acts is alleged to have occurred in this district, and venue is therefore inappropriate  
 5 here.  
 6

### 7 **BACKGROUND**

8 19. Ross University is owned by DeVry, Inc., which is a publicly traded company. Ross  
 9 University School of Medicine (hereafter Ross University) is a *for-profit* institution that provides  
 10 medical education, with a campus on the Caribbean island of Dominica.  
 11

12 20. This action arises after recent negative press against the plaintiff by Illinois Senator  
 13 Dick Durbin (**Exhibit-2**), Bloomberg News (**Exhibit-3**), the attorney generals of the states of  
 14 Illinois and Massachusetts (**Exhibit-4**), and other major news outlets for alleging the plaintiff is  
 15 defrauding the U.S taxpayers. The plaintiff is angry and is lashing out against Mr. Amini for  
 16 publishing what has already been stated publicly against the plaintiff.  
 17

18 21. On September 10, 2013 Illinois Senator Dick Durbin posted the following complaint  
 19 on his website that had been filed with the Secretary of the Department of Education against the  
 20 plaintiff (**Exhibit-2**). Here is the excerpt from the Senator’s complaint:

21 “This troubling piece explains how two DeVry-owned foreign  
 22 medical schools, American University of the Caribbean School  
 23 of Medicine and **Ross University School of Medicine, prey**  
 24 **on students who have been rejected by traditional US**  
 25 **medical schools. These students are lured into massive**  
 26 **amounts of debt – much higher than traditional schools –**  
**and receive very little to show for it by way of a useful**  
**degree.”**

1           22. On that same day, Bloomberg published the article “**DeVry Lures Medical School**  
2 **Rejects as Taxpayers Fund Debt**,” describing how the plaintiffs is shortchanging tax payers and  
3 students of millions of dollars (**Exhibit-3**).

4           23. On April 2013, the offices of the attorneys general of Illinois and Massachusetts  
5 issued subpoenas and launched an investigation against the plaintiff’s parent company for its use  
6 of student loans and for its compensation practices (**Exhibit-4**).

7           24. On December 2009, an article published by the Tampa Bay Times described how  
8 the plaintiff is shortchanging tax payers millions of dollars. The article stated that “federal  
9 regulators are taking a closer look at evidence suggesting taxpayers and students may be getting  
10 shortchanged by foreign medical schools.”(Exhibit-5).

11           25. According to the plaintiff’s own website, only 52% of Ross Medical students  
12 graduate on time compared to 97% for the average medical school (**Exhibit-6**).

13           26. Against this backdrop, Mr. Amini decided to share his own personal experience with  
14 Ross University to the public. He purchased six domains with the word “Ross” in them on  
15 September 21, 2013, activated three of the domains, and published his content up until October  
16 16, 2013 for a total of 24 days.

17           27. The entire website is in the record (**Exhibit-7**). Mr. Amini placed a disclaimer at  
18 the top of the first page of the website, disclosing to visitors that the website is not  
19 associated with Ross University (**Exhibit-8**). Mr. Amini’s website contains no advertising,  
20 charges no fees, does not seek to sell anything or direct users to websites that do. Consistent  
21 with Mr. Amini’s First Amendment Right of Freedom of Speech, the website seeks only to  
22  
23  
24  
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26

1 inform and allow visitors to express their opinions on a variety of topics. The website does not  
2 exist for any commercial purpose, and it has no defamatory statement against anyone.

3         28. In addition to his personal opinion and experience, Mr. Amini's website provides  
4 information that is already of public record or available elsewhere on the internet. The websites  
5 had links to Senator Durbin's web page, the Bloomberg News, the Tampa Bay Times, a few  
6 regulatory agencies, and a link to internal documents that are on public record.

7  
8         29. Furthermore, Mr. Amini is not a competitor of the Movants and according to the  
9 plaintiff's own admission in their verified complaint, "Amini is a disgruntled former RUSM  
10 student" and "Amini is an embittered former RUSM student" and there is no mention of Mr. Amini  
11 being a competitor of Ross University or any indication of commercial motive by Mr. Amini.  
12

13         30. The website has no commercial purpose, and the website disclaimer combined  
14 with the content certainly causes no confusion with the official site of the plaintiff.

15         31. Therefore, the trademark claims are defective because Mr. Amini's web site consists  
16 of protected speech relating to his former University. Not only does the First Amendment protect  
17 Mr. Amini's right to publish his views about Ross University on his website, but trademark law  
18 does not prevent consumers and their legal representatives from criticizing corporations and from  
19 using a company's trademarked names to identify the corporation whom they are criticizing.  
20  
21  
22  
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26

1           32. The attorney for the plaintiff falsely claimed that Mr. Amini had three attorneys to  
2 assist him with the settlement agreement and therefore the settlement agreement was fair and  
3 negotiated in good faith. Mr. Amini could have had 500 attorneys to assist him and the result still  
4 would have been the same: RUSM dictated the terms and there was nothing to negotiate.

5           33. There is a well-documented history of malicious retaliation by Ross University  
6 against Mr. Amini for whistleblowing activities, notwithstanding his excellent performance as a  
7 student.  
8

9           34. Ross University attempted three times to force Mr. Amini into signing the settlement  
10 agreement in exchange for basic services that any medical student at the university was entitled  
11 to receive from its administration. The first attempt is reflected most notably in the “Extension  
12 Agreement” for his USMLE 1 proffered in exchange for his perpetual silence about the school  
13 and its business practices (**Exhibit-9**). The second attempt was on June 2011 when Ross  
14 University refused to schedule Mr. Amini for a clinical rotation unless he signed the settlement  
15 agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross University  
16 threatened to take him before the grievance committee, without granting Mr. Amini due process,  
17 unless he signed. Mr. Amini then agreed to sign the agreement and to leave Ross (**Exhibit-10**),  
18 New Jersey being the forum of choice for Ross University.  
19  
20

21           35. Mr. Amini first hired attorney George Cotz, to help him with the grievance process.  
22 Attached here as **Exhibit-11**, are two letters that attorney Cotz wrote to Ross University’s  
23 attorney, stating that Ross University was not following its own internal guidelines.  
24

25           36. Even after attorney Cotz’s involvement, Ross University wouldn’t grant Mr. Amini  
26 request for due process as defined in their internal guidelines. Then Mr. Amini asked another

1 attorney, Colleen Kerwick, to get involved. Again Ross University wouldn't grant Mr. Amini  
2 due process. Therefore, Mr. Amini was not able to adequately defend himself.

3 37. In fact Ross University was more interested in leveraging the grievance hearing to  
4 force Mr. Amini into a settlement agreement rather than granting Mr. Amini due process for the  
5 grievance hearing as outlined by Ross University's attorney statement (**Exhibit-12**): "I am  
6 advised that it is not too late for your client to withdraw and transfer. If this is of interest to him,  
7 let me know and we can pursue it. I am confident Ross will agree to counsel your client re this  
8 process and agree to providing a neutral reference to the extent one is needed. We would want a  
9 non-disparagement provision (mutual) included in the settlement agreement. We need to move  
10 promptly. The hearing is going to proceed on the schedule I have previously indicated to you  
11 absent some resolution in the very near future". The settlement agreement was non-negotiable.

12  
13  
14 38. Even after the settlement agreement was signed, Ross University did not perform its  
15 obligations to Mr. Amini under the Settlement Agreement and breached its obligations to Mr.  
16 Amini. Specifically, Ross University has breached Section 4.18 of the Settlement Agreement by  
17 disclosing to Mr. Amini's new medical school, AUA, the circumstance of Mr. Amini's transfer,  
18 which led to Mr. Amini's discharge from AUA in March 2013.

19  
20 39. Mr. Amini has suffered significant damages. First, his medical education has been  
21 short-circuited by Ross University. Second, he is in debt for the amount of \$239,000(**Exhibit-13**).  
22 for attending Ross University, though he has nothing to show for this financial liability. Third, he  
23 has had to endure emotional and psychological suffering as a result of the plaintiff's actions. Mr.  
24 Amini had no money left to go to New Jersey to file a lawsuit against Ross University.  
25  
26



1           44. The plaintiff's main business is located outside of the state of New Jersey. According  
 2 to Ross University's own published catalog from 2013 (**Exhibit-1**), and  
 3 contrary to the plaintiff's statement to this Court, RUSM's administrative functions in New  
 4 Jersey are not substantial. The RUSM campus is located on the Caribbean island of Dominica,  
 5 and the dean's office, who signed the verified complaint, the office of registrar, the office of  
 6 student services, and the office of clinical rotations are all located in Florida. The President's  
 7 office is located in Chicago. Majority of the staff for the educational and business operations is  
 8 located outside of New Jersey. The New Jersey office only handles student finance. Mr. Amini  
 9 had spent over a year attending RUSM in Dominica. He had spent over six months

10  
 11  
 12           **DISTRICT COURT OF NEW JERSEY JUDGES DENIED PERSONAL**  
 13 **JURISDICTION OVER DEFENDENTS WITH NON-INTERACTIVE WEBSITES**

14           45. The entire website is in the record (**Exhibit-7**). Mr. Amini placed a disclaimer at the  
 15 top of the first page of the website, disclosing to visitors that the website is not associated  
 16 with Ross University (**Exhibit-8**). Mr. Amini's website contains no advertising, charges no fees,  
 17 does not seek to sell anything or direct users to websites that do. Consistent with Mr. Amini's  
 18 First Amendment Right of Freedom of Speech, the website seeks only to inform and allow  
 19 visitors to express their opinions on a variety of topics. The website does not exist for any  
 20 commercial purpose, and it has no defamatory statement against anyone.

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 22           46. In addition to his personal opinion and experience, Mr. Amini's website provides  
 23 information that is already of public record or available elsewhere on the internet. The websites  
 24 had links to Senator Durbin's web page, the Bloomberg News, the Tampa Bay Times, a few  
 25 regulatory agencies, and a link to internal documents that are on public record.  
 26

1           47. Furthermore, Mr. Amini is not a competitor of the Movants and according to the  
2 plaintiff's own admission in their verified complaint, "Amini is a disgruntled former RUSM  
3 student" and "Amini is an embittered former RUSM student" and there is no mention of Mr. Amini  
4 being a competitor of Ross University or any indication of commercial motive by Mr. Amini.

5           48. The website has no commercial purpose, and the website disclaimer combined  
6 with the content certainly causes no confusion with the official site of the plaintiff.  
7

8           49. In *Weber v. Jolly Hotels*, 977 F. Supp. 327 – 1997, District Judge Wolin held that the  
9 District Court lacked jurisdiction because the hotel's website merely amounted to a national  
10 advertisement and was not a means of conducting business in New Jersey. The court stated:  
11 "sites that merely provide information or advertisements ("passive web sites") - here, without  
12 other factors, at least in the Third Circuit, jurisdiction is denied since to hold otherwise would  
13 have the effect of creating worldwide jurisdiction over anyone who establishes an Internet  
14 website"  
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16           50. In *Osteotech v. Gensci Regeneration Services*, 6 F. Supp.2d 349 (D.N.J. 1997),  
17 District Judge Bissell found that the District Court did not have personal jurisdiction because the  
18 defendant's website was not sufficiently interactive to find that the defendant purposely availed  
19 itself of the benefits of the forum state.  
20

21           51. In *Green v. William Mason & Co.* 976 F. Supp. 298 - 1997, District Judge Walls  
22 refused to exercise the District Court of New Jersey's general jurisdiction over the defendant  
23 where its website merely constituted an advertisement that provided a toll free number.  
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25           52. In *Decker v. Circus Circus Hotel* F. Supp. 2d 743, the District Court of New Jersey  
26 refused to exercise personal jurisdiction over a Nevada casino because, although the defendant -

1 casino operated an interactive website that invited New Jersey residents to make hotel  
 2 reservations over the Internet, the website contained a forum selection clause that conditioned the  
 3 use of the website upon an agreement that all disputes be settled in Nevada.  
 4

5  
 6 **II. DEFENDANT REQUESTS THAT THIS COURT TRANSFER VENUE OF**  
 7 **THIS ACTION TO THE US DISTRICT COURT FOR THE DISTRICT OF**  
 8 **ARIZONA.**

9 53. Mr. Amini requests that this Court transfer venue of this action to the US District  
 10 Court for the District of Arizona.  
 11

12 54. “For the convenience of parties and witnesses, in the interest of justice, a district  
 13 court may transfer any civil action to any other district or division where it might have been  
 14 brought.” 28 USC. § 1404(a). The Court should exercise its power to transfer a case in order “to  
 15 prevent the waste of time, energy, and money and to protect litigants, witnesses and the public  
 16 against unnecessary inconvenience and expense.  
 17

18 55. A civil action may be brought wherever “a substantial part of the events or omissions  
 19 giving rise to the claim occurred.” 28 USC. § 1391(a). However, the venue is improper: 1) The  
 20 plaintiff’s main business is located outside of the state of New Jersey. According to Ross  
 21 University’s own published catalog from 2013 (**see Exhibit-1**), and contrary to the plaintiff’s  
 22 statement to this Court, RUSM’s administrative functions in New Jersey are not substantial. The  
 23 RUSM campus is located on the Caribbean island of Dominica, and the dean’s office, who  
 24 signed the verified complaint, the office of registrar, the office of student services, and the office  
 25 of clinical rotations are all located in Florida. The President’s office is located in Chicago.  
 26

1 Majority of the staff for the educational and business operations is located outside of New Jersey.  
2 The New Jersey office only handles student finance. Mr. Amini had spent over a year attending  
3 RUSM in Dominica. He had spent over six months attending RUSM in Miami, but he had never  
4 visited Ross University in New Jersey. 2) All of the activities in question--the production of the  
5 websites' content and their launch--all originated from Phoenix, AZ where Mr. Amini lives.  
6

7 56. When considering the factors that weigh for and against transfer, this Court must  
8 look to undisputed facts and matters of record rather than mere assertions found in the attorney's  
9 briefs. *Job Haines Home for the Aged v. Young*, 936 F. Supp. 223, 228 (D.N.J. 1996).  
10

11 57. The Third Circuit has considered a variety of factors which may be relevant in a  
12 motion to transfer venue. These factors are frequently grouped into two categories: public and  
13 private interests. Private interests include plaintiff's forum preference, defendant's forum  
14 preference, whether the claim arose outside of the current forum, the convenience of the parties  
15 as indicated by their physical and financial condition, the convenience of the witnesses, and the  
16 location of relevant books and records. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (3d  
17 Cir. 1995). Public interests include the enforceability of the judgment, practical considerations,  
18 the relative court congestion of the two fora, local interests in deciding local controversies at  
19 home, the public policies of the fora, and the trial judge's familiarity with the applicable state  
20 law in a diversity case. *Id.* at 879-80. All of these factors may be balanced to determine if the  
21 requested venue would better serve the interests of justice than the current forum.  
22

23 58. The first private interests to consider are the preferences of the plaintiff and  
24 defendant. The Third Circuit previously held that when considering a request for transfer of  
25 venue, significant weight must be given to the plaintiff's initial choice of forum, as it "is a  
26

paramount consideration in any determination of a transfer request.” *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970); *Ramada Worldwide, Inc. v. Bellmark Sarasota Airport, LLC*, 2006 WL1675067, at \*2 (D.N.J. June 15, 2006).

59. A plaintiff’s interest in getting to choose the forum may be reduced when the central facts at issue take place outside of the forum. *In re Consolidated Parlodel Litigation*, 22 F. Supp. 2d 320, 323-24 (D.N.J. 1998). Here all of the alleged incidents in question have taken place in Phoenix, AZ rather than in New Jersey. In addition, it is undisputed that the defendant Behzad Amini resides in Phoenix, Arizona.

60. There is no reason to disregard the plaintiff’s preference in favor of the defendant’s preferred forum. *Cf. Ricoh Co., Ltd. v. Honeywell Inc.*, 817 F. Supp. 473, 481-82 (D.N.J. 1993) (disregarding plaintiff’s choice of forum when only connection between forum and subject of litigation was sale of products by defendant in the state); *Sadler v. Hallsmith SYSCO FoodServices*, 2009 WL 1096309, at \*4-5 (D.N.J. 2009) (finding that plaintiff’s choice of forum weighed against transfer when plaintiffs resided in forum and had witnesses located in forum despite majority of facts being outside the state). However, in the present case, the plaintiff’s main business is located outside of the state of New Jersey. According to Ross University’s own published catalog from 2013 (**see below Exhibit-1**), and contrary to the plaintiff’s statement to this Court, RUSM’s administrative functions in New Jersey are not substantial. The RUSM campus is located on the Caribbean island of Dominica, and the dean’s office, who signed the verified complaint, the office of registrar, the office of student services, and the office of clinical rotations are all located in Florida. The President’s office is located in Chicago. Majority of the staff for the educational and business operations is located outside of New Jersey. The New

1 Jersey office only handles student finance. Mr. Amini had spent over a year attending RUSM in  
2 Dominica. He had spent over six months attending RUSM in Miami, but he had never visited  
3 Ross University in New Jersey.  
4

5 61. The second private interest to consider is the convenience of the parties.

6 62. As noted by this Court during the October 28, 2013 hearing, Mr. Amini  
7 will not be able to adequately represent himself without an attorney and at a distance of 2,394  
8 miles from New Jersey.

9 63. Mr. Amini resides in Phoenix, Arizona. He has no connection to the state of New  
10 Jersey. He does not own property, bank accounts, maintain an office or an agent, or direct any  
11 business specifically to New Jersey. Mr. Amini has never resided in New Jersey. **Decl. ¶ 1.**  
12

13 64. Mr. Amini is unemployed and has less than \$700 left in his bank account and is  
14 unable to maintain a basic living. He Owes US taxpayers \$239,375 as result of his medical  
15 education at Ross University, but is unable to service his loan due to financial hardship. He can-  
16 not afford an attorney. He has no health insurance and has not been able to visit his seven-year-  
17 old old daughter in Canada due to financial difficulties. **Decl. ¶ 2, ¶ 3, ¶ 4, ¶ 5, ¶ 6, ¶ 7.**

18 65. The current forum is not accessible to the defendant by car or train, and given that  
19 he lacks financial means, he can neither afford a plane ticket, hotel expenses, nor hire an attorney.  
20

21 66. In his response to Mr. Amini's motion, Attorney Flynn has stated that Mr. Amini is  
22 financially capable to move to New Jersey and defend himself against this lawsuit because he  
23 can afford a cellular phone. Having a cell phone or paying \$68 to register six domains is not an  
24 indication that Mr. Amin is capable of paying thousands of dollars that he doesn't have to defend  
25 this case in a New Jersey court.  
26

1           67. Therefore, an extraordinary circumstance does exist, and the defendant respectfully  
2 asks this court to transfer the venue to the District Court of Arizona so he can advocate his  
3 position without the inherent disadvantage of arguing a case from 2,394 miles away.  
4

5           68. The plaintiff's main business is located outside of the state of New Jersey.  
6 According to Ross University's own published catalog from 2013 (**see below Exhibit-1**), and  
7 contrary to the plaintiff's statement to this Court, RUSM's administrative functions in New  
8 Jersey are not substantial. The RUSM campus is located on the Caribbean island of Dominica,  
9 and the dean's office, who signed the verified complaint, the office of registrar, the office of  
10 student services, and the office of clinical rotations are all located in Florida. The President's  
11 office is located in Chicago. Majority of the staff for the educational and business operations is  
12 located outside of New Jersey. The New Jersey office only handles student finance. Mr. Amini  
13 had spent over a year attending RUSM in Dominica. He had spent over six months attending  
14 RUSM in Miami, but he had never visited Ross University in New Jersey.  
15  
16

17           69. Furthermore, DeVry Inc., an Illinois corporation, owns and operates three schools  
18 in Arizona, located in: Phoenix, Mesa, and Glendale.

19           70. Ross University regularly conducts informational seminars on its program in  
20 Arizona.  
21

22           71. Since 2006, over ten lawsuits have been filed by students against Ross University,  
23 and over one hundred (>100) lawsuits have been filed against the plaintiff's parent company,  
24 DeVry, Inc., across the country.  
25  
26

1           72. Therefore an order transferring the venue to the United States District Court for  
2 the District of Arizona would not inconvenience or prejudice the plaintiff in any way because of  
3 their limitless resources and their ability to litigate this case in any forum.  
4

5           73. The third private interest, and perhaps the most important, is the convenience of  
6 non-party witnesses. The defendant claims that almost all of the witnesses that he will call are  
7 located in Phoenix, Arizona, and that it is particularly inconvenient for them to travel to New  
8 Jersey, 2,394 miles away, plus pay for hotels and expenses.

9           74. In addition, when considering the convenience of witnesses, the proximity of this  
10 Court to the location of the witnesses must again be noted. Phoenix, Arizona is approximately  
11 2,394 miles away from this Court in Trenton, New Jersey. Indeed, the Third Circuit has found  
12 that the inconvenience of witnesses may only be considered to the extent that the witnesses  
13 would be unavailable for trial in the forum. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80  
14 (3d Cir. 1995). Given the proximity of the witnesses and the fact that Phoenix Arizona is not  
15 within short distance of this Court's subpoena power, the transfer of venue will substantially  
16 reduce the inconvenience to non-party witnesses; otherwise, the defendant's witnesses will not  
17 be available for trial in this forum.  
18

19           75. Finally, the last private interest to consider is the availability of books or records.  
20 None of the alleged incidents took place in the state of New Jersey. Mr. Amini has spent over a  
21 year attending RUSM in Dominica. He has spent over six month attending RUSM in Miami. But  
22 he has never visited Ross University in New Jersey and does not even know what it looks like.  
23 The alleged websites were launched in Phoenix, AZ. All the defendant's records for the alleged  
24 claims are also located in Phoenix, AZ. None of the plaintiff's books and records is located in the  
25 state of New Jersey since their administrative office in New Jersey only handles student finance  
26

1 **(Exhibit-1)**. The verified complaint was signed by Josphe Flaherty, the dean of RUSM, whose  
 2 office is located in Florida.

3 76. Thus, on the whole, the private interests indicate that the interests of justice would be  
 4 better served by a transfer of venue to the US District Court for the District of Arizona.

5 77. In addition to the aforementioned private interests, this Court must consider the  
 6 relevant public interests. First, this defendant can't produce evidence that every judgment entered  
 7 in New Jersey would be afforded full faith and credit by the state of Arizona. Second, the  
 8 defendant alleging that the docket of the US District Court for the District of Arizona is  
 9 significantly less congested than the District of New Jersey. The court's statistical data clearly  
 10 indicates that the US District Court for the District of Arizona is less congested in terms of civil  
 11 case loads in comparison to the New Jersey court. The data suggests that from 2011 to 2012,  
 12 there was almost twice the case load in the US District Court for the District of New Jersey in  
 13 comparison with the US District Court for the District of Arizona **(Exhibit-14)**.  
 14  
 15

#### 16 **A FORUM SELECTION CLAUSE**

17 78. A forum selection clause is maybe enforceable unless it results from "fraud, undue  
 18 influence, or overweening bargaining power," is "unreasonable" or "violates" a "strong public  
 19 policy." *M/S Bremen v. Zapata Off-Shore Co.*, 407 US 1, 10-15, 92 S. Ct. 1907, 1913-16, 32 L.  
 20 Ed. 2d 513, 520-23 (1972). "Absent 'unconscionability, fraud, or overreaching in the  
 21 negotiations of the settlement, ... no legal or equitable basis exists to reform the parties'  
 22 property settlement agreement." *N.H. v. H.H.*, 418 N.J. Super. 262, 282 (App. Div. 2011)  
 23 (quoting *Miller v. Miller*, 160 N.J. 408, 419 (1999)).  
 24  
 25

26 79. As stated by the court, unconscionability can be manifested in two ways. The first is

1 procedural unconscionability, which involves a “variety of inadequacies, such as age, literacy,  
 2 lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the  
 3 particular setting existing during the contract formation process....” *Muhammad v. Cnty. Bank*  
 4 *of Rehoboth Beach*, 189 N.J. 1, 15 (2006), (quoting *Sitogum Holdings, Inc.*, 352 N.J. Super.  
 5 555, 564 (Ch. Div. 2002)) cert. denied, 549 US 1338, 127 S. Ct. 2032, 167 L. Ed. 2d 763  
 6 (2007). The second is substantive unconscionability, which is determined by applying the four  
 7 factors identified by the Court in *Rudbart v. North Jersey District Water Supply Commission*,  
 8 127 N.J. 344, 356, cert. denied, 506 US 871, 113 S. Ct. 203, 121 L. Ed. 2d 145 (1992). These  
 9 factors are: “[1] the subject matter of the contract, [2] the parties’ relative bargaining positions,  
 10 [3] the degree of economic compulsion motivating the ‘adhering’ party, and [4] the public  
 11 interests affected by the contract.”  
 12  
 13

14 80. The alleged settlement agreement is attached to the complaint as **Exhibit-10**.

15 81. The attorney for the plaintiff falsely claimed that Mr. Amini had three attorneys to  
 16 assist him with the settlement agreement and therefore the settlement agreement was fair and  
 17 negotiated in good faith. Mr. Amini could have had 500 attorneys to assist him and the result still  
 18 would have been the same: RUSM dictated the terms and there was nothing to negotiate.  
 19

20 82. There is a well-documented history of malicious retaliation by Ross University  
 21 against Mr. Amini for whistleblowing activities, notwithstanding his excellent performance as a  
 22 student (See Amini’s Motions).  
 23

24 83. Ross University attempted three times to force Mr. Amini into signing the  
 25 settlement agreement in exchange for basic services that any medical student at the university  
 26 was entitled to receive from its administration. The first attempt is reflected most notably in the

1 “Extension Agreement” for his USMLE 1 proffered in exchange for his perpetual silence about  
2 the school and its business practices (**Exhibit-9**). The second attempt was on June 2011 when  
3 Ross University refused to schedule Mr. Amini for a clinical rotation unless he signed the  
4 settlement agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross  
5 University threatened to take him before the grievance committee, without granting Mr. Amini  
6 due process, unless he signed. Mr. Amini then agreed to sign the agreement and to leave Ross  
7 (**Exhibit-10**), New Jersey being the forum of choice for Ross University.

9 84. Mr. Amini had to hire two attorneys because Ross University did not follow its own  
10 internal procedures – as outlined in the student handbook – for a fair grievance process. Even  
11 after hiring a second attorney, Ross still wouldn’t grant Mr. Amini a due process for the  
12 grievance hearing. Mr. Amini first hired attorney George Cotz to help him with the grievance  
13 process. Attached here as **Exhibit-11**, are two letters that attorney Cotz wrote to Ross  
14 University’s attorney, stating that Ross University was not following its own internal guidelines.

16 85. Even after attorney Cotz’s involvement, Ross University wouldn’t grant Mr. Amini  
17 request for due process as defined in their internal guidelines. Then Mr. Amini asked another  
18 attorney, Colleen Kerwick, to get involved. Again Ross University wouldn’t grant Mr. Amini  
19 due process. Therefore, Mr. Amini was not able to adequately defend himself.

21 86. In fact Ross University was more interested in leveraging the grievance hearing to  
22 force Mr. Amini into a settlement agreement rather than granting Mr. Amini due process for the  
23 grievance hearing as outlined by Ross University’s attorney statement (**Exhibit-12**): “I am  
24 advised that it is not too late for your client to withdraw and transfer. If this is of interest to him,  
25 let me know and we can pursue it. I am confident Ross will agree to counsel your client re this  
26 process and agree to providing a neutral reference to the extent one is needed. We would want a

1 non-disparagement provision (mutual) included in the settlement agreement. We need to move  
2 promptly. The hearing is going to proceed on the schedule I have previously indicated to you  
3 absent some resolution in the very near future”. The settlement agreement was non-negotiable.

4  
5 87. By refusing to provide the very basic services that any medical student at the  
6 university is entitled to receive, Ross University used its bargaining power to force a weaker  
7 party, Mr. Amini, to agree to its term, leaving Mr. Amini with no power to negotiate. To Mr.  
8 Amini, the non-disparagement agreement was nothing more than a contract of adhesion, a  
9 boilerplate contract that Ross University attempted three times to shove down his throat after  
10 repeatedly denying him normal student services. Ross University finally succeeded on its third  
11 attempt. The terms and conditions of the contract were set by Ross University, and Mr. Amini  
12 had little or no ability to negotiate more favorable terms, thus placing him in a "take it or leave  
13 it" position.

14  
15 88. The settlement agreement was not negotiated in good faith and was forced upon  
16 Mr.Amini. Ross University attempted three times to force him into signing the settlement  
17 agreement in exchange for basic services that any medical student at the university was entitled  
18 to receive from its administration. The first attempt was on April 2011 in exchange for a 30-day  
19 extension for taking his USMLE exam (**Exhibit-17**). The second attempt was on June 2011  
20 when Ross University refused to schedule Mr. Amini for a rotation unless he signed the  
21 settlement agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross  
22 University threatened to take him before the grievance committee, without granting Mr. Amini  
23 due process, unless he signed. Mr. Amini then agreed to sign the agreement and to leave Ross.  
24  
25  
26

1           89. Ross University's choice in the forum selection clause arises from nothing more than  
 2 forum shopping. They conveniently selected New Jersey where the plaintiff's law firm, Epstein  
 3 Becker & Green, is located. By their own admission, the plaintiff implies they receive favorable  
 4 treatment from the Court in New Jersey, as stated by the plaintiff's attorney: "Amini now wishes  
 5 to avoid this Court because it already has made determinations adverse to him."  
 6

7           90. The plaintiff's main business is located outside of the state of New Jersey. According  
 8 to Ross University's own published catalog from 2013 (see below **Exhibit-1**), and  
 9 contrary to the plaintiff's statement to this Court, RUSM's administrative functions in New  
 10 Jersey are not substantial. The RUSM campus is located on the Caribbean island of Dominica,  
 11 and the dean's office, who signed the verified complaint, the office of registrar, the office of  
 12 student services, and the office of clinical rotations are all located in Florida. The President's  
 13 office is located in Chicago. Majority of the staff for the educational and business operations is  
 14 located outside of New Jersey. The New Jersey office only handles student finance. Mr. Amini  
 15 had spent over a year attending RUSM in Dominica. He had spent over six months attending  
 16 RUSM in Miami, but he had never visited Ross University in New Jersey. Again, the New Jersey  
 17 office only handles student finance (**Exhibit-1**). Almost all of the witnesses for this case live  
 18 outside of the great state of New Jersey.  
 19  
 20

21           91. Ross University and their attorney's choice of New Jersey in the forum clause makes  
 22 it impossible for students who can't afford to fly across the country to launch a complaint against  
 23 the plaintiff in New Jersey or have their day in the court in case of any dispute in the case. Mr.  
 24 Amini did request for a change of venue, but the plaintiff's attorney wouldn't agree, essentially  
 25 holding a "take it or leave it" position.  
 26



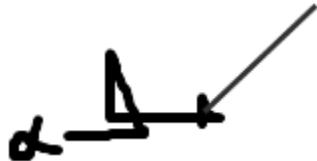
1 as he did not purposefully avail himself of the privilege of conducting activities in New Jersey,  
2 the plaintiff's claims do not arise out of activities directed at New Jersey, and, therefore, the  
3 exercise of jurisdiction would not be constitutionally reasonable. New Jersey lacks general  
4 personal jurisdiction because Mr. Amini does not have continuous and systematic contacts with  
5 New Jersey.  
6

7 97. The complaint should be dismissed for improper venue under rule 12(b)(3) as Mr.  
8 Amini never lived in New Jersey before. Mr. Amini wrote the content of his website outside of  
9 New Jersey, and published his website outside of New Jersey. No "substantial part" of those acts  
10 is alleged to have occurred in this district, and venue is therefore inappropriate here.  
11 Furthermore the requirement by the court to defend this case in New Jersey would not only be  
12 inconvenient, burdensome, and a gross miscarriage of justice, but it would be depriving Mr.  
13 Amini of his day in court.  
14

15 **WHEREFORE,** For all the foregoing reasons, the defendant, Behzad Amini,  
16 requests this Court to grant motion to dismiss the Complaint in its entirety under Rules  
17 12(b)(2) and 12(b)(3), or alternatively transfer venue pursuant to 28 USC. § 1404(a) to the United  
18 States District Court for the District of Arizona, for the foregoing reasons, based on the above  
19 cited authorities.  
20

21 **Dated: 19 of November, 2013.**

22  
23  
24  
25  
26

A handwritten signature in black ink, appearing to be 'Behzad Amini', with a long horizontal line extending to the right.

Behzad Amini – Pro Se

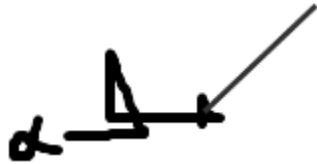
VERIFICATION

I, Behzad Amini, hereby verify and certify under 28 U.S.C. § 1746 to the following facts:

1. I am the defendant in the above case.
2. I have read the foregoing response brief and know the contents thereof, and the same is true to my own knowledge, except to those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

I certify under penalty of perjury that the foregoing is true and correct.

**Dated: 19 of November, 2013.**

A handwritten signature in black ink, appearing to be 'Behzad Amini', with a long diagonal line extending from the end of the signature.

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Behzad Amini – Pro Se